



**State of Maryland
OFFICE OF THE ATTORNEY GENERAL**

ANNUAL REPORT OF THE PEOPLE'S INSURANCE COUNSEL DIVISION

Fiscal Year 2007

Submitted to the Governor and General Assembly

I. Introduction

The People's Insurance Counsel Division in the Office of the Attorney General (hereinafter referred to as "PICD" or "Division") submits this annual report as required by the Maryland General Assembly.¹ On or before January 1 of each year, PICD is required to issue a report on the activities of the Division in the prior fiscal year. This report covers the time period from July 1, 2006 through June 30, 2007.

A. Statutory Basis and Funding

The Division was created in 2005 with the enactment of the Maryland Patients' Access to Quality Health Care Act of 2004 (hereinafter referred to as "Act").² The provisions of the Act relating to the Division have been codified in Md. Code Ann., State Government §§ 6-301 through 6-308.

Funding of the Division is provided through a People's Insurance Counsel Fund consisting of funds collected by the Maryland Insurance Commissioner (hereinafter referred to as the "Commissioner") through an annual assessment from each medical professional liability insurer and homeowners insurer issuing policies in the State. The purpose of the Fund is to pay the costs and expenses of the Division in carrying out its duties.³

B. Statutory Duties

The duties of the Division include evaluation of each medical professional liability insurance and homeowners insurance matter pending before the Commissioner to determine whether the interests of insurance consumers are affected.⁴ The Division also reviews any rate increase of 10% or more filed with the Commissioner by a medical professional liability insurer or homeowners insurer. If the Division determines that a rate increase is adverse to the interests of consumers, its representative shall appear before the Commissioner at any hearing on the rate filing. At any time,

¹Md. Code Ann., State Government § 6-308.

² The Act was introduced as an emergency measure as House Bill 2 in a 2004 Special Session of the Maryland General Assembly convened on December 28, 2004. The Bill passed and was enacted in 2005 over the Governor's veto with an effective date of January 11, 2005. The Act was amended in 2005, effective March 31, 2005, by another emergency measure, House Bill 836.

³ Md. Code Ann., State Government § 6-304 and § 6-305. Because the duties of the Division only relate to two types of insurance, homeowners insurance and medical professional liability insurance, the insurers who are assessed for the Fund are limited to the insurers issuing those types of policies in Maryland.

⁴ Md. Code Ann., State Government § 6-306(a). The Act defines insurance consumers as those insured under homeowners policies or medical professional liability insurance policies.

the Division may conduct investigations and request the Commissioner to initiate an action or proceeding to protect the interests of insurance consumers.⁵

In any appearance before the Commissioner or the courts, the Division has the rights of counsel for a party to the proceeding, including summoning witnesses, cross-examination of witnesses, presenting evidence and argument. The Division may also take depositions in proceedings before the Commissioner and in proceedings in court, in accordance with applicable law and procedure.⁶

The Division is given full access to the Commissioner's records, including rate filings, and shall have the benefit of all other information of the Commissioner.⁷ The Division is entitled to the assistance of the Commissioner's staff provided that the assistance is consistent with the staff's responsibilities and with the respective interests of the staff and the Division.⁸

The Division may recommend legislation on matters that promote the interests of insurance consumers in Maryland.⁹

II. Division Staff and Budget

At the commencement of the fiscal year, the Division was staffed by the People's Insurance Counsel Ilene J. Nathan,¹⁰ an Assistant Attorney General and an administrative assistant. The investigator position was unfilled when FY 2007 began. The investigator's position was upgraded to Actuarial Analyst/Investigator in July 2006 and was filled by an actuarial student from August 2006 through October 2006.¹¹ The administrative assistant was promoted to management associate in March 2007 and then to the Analyst/Investigator position in April 2007. The management

⁵ The Division's duties are described in Md. Code Ann., State Government § 6-306.

⁶ Md. Code Ann., State Government § 6-307.

⁷ Md. Code Ann., State Government § 6-307(c). The Division's access to information is only limited by applicable statutes in the Insurance Article and the Maryland Public Information Act, State Government Article, §§ 10-611 to 10-630.

⁸ Md. Code Ann., State Government § 6-307(c)(2).

⁹ Md. Code Ann., State Government § 6-307(d).

¹⁰ The People's Insurance Counsel was appointed by former Attorney General J. Joseph Curran, Jr. and the appointment was confirmed by the Senate on February 13, 2006, as required by Md. Code Ann., State Government 6-302(a)(2)

¹¹ The Actuarial Analyst/Investigator commuted from out-of-state on a daily basis and opted not to move to Maryland and remain in the position permanently.

associate's position was filled at the end of the fiscal year.¹²

Two actuarial firms provided consulting services to the Division reviewing rates and other documents that were filed by insurers issuing policies in Maryland. Both consultants were selected for their expertise in property and casualty rate filings, and their contracts were renewed prior to the conclusion of the fiscal year.

III. Division Responsibilities

The Division has concentrated its efforts in three areas: review of consumer complaints filed with the Maryland Insurance Administration (hereinafter "MIA") relating to homeowners insurance and medical professional liability insurance; review of rate filings in those two lines of insurance¹³; and review of proposed legislation.

A. Division Review of Complaint Determination Letters

After a consumer has initiated a complaint with the MIA regarding the action of an insurance company, the MIA conducts an investigation and issues a determination letter to the complainant and company at the completion of its investigation. The Division reviews all complaint determination letters to assess if any patterns of insurer conduct contrary to the insurance code exist. The complaints primarily relate to the cancellation or non-renewal of coverage, increase in premiums, modification of coverage, or claim settlements.¹⁴

It has become the practice of the Division to issue its own explanatory letter and printed

¹² There have been significant periods of time during FY07 in which the Division was not fully staffed as qualified individuals with the specialized knowledge required to fulfill the Division's mandate were sought.

¹³ The Division has interpreted its statutory authority to include the review of any MIA proceeding which impacts homeowners and medical professional liability policyholders. This decision derives from its broad mandate to review "each medical professional liability insurance and homeowners insurance matter pending before the Commissioner". Md. Code Ann., State Government § 6-306(a) Rate filings are reviewed pursuant to a specific mandate to "review any rate increase of 10% or more filed with the Commissioner by a medical professional liability insurer or homeowners insurer". Md. Code Ann., State Government § 6-306(a)

¹⁴ The Annual Report for the MIA for Fiscal Year 2006 states that the Property and Casualty Consumer Complaint Section handled 11,168 complaints from consumers. The complaints that did not relate to personal automobile insurance totaled 2,787. Homeowners insurance complaints and those related to medical professional liability insurance are included in this number but are not specifically broken out in the Report.

materials to the majority of individuals who have received the MIA determination letters.¹⁵ The Division's letter explains that a staff member is available to advise consumers on their rights to hearings before the Commissioner and explains applicable statutory and regulatory frameworks for hearings. Through calls from consumers who have received the Division's letter, additional information about company practices is gathered beyond the information detailed in the determination letters themselves. The Division's review of the determination letters has provided an opportunity to understand the procedures and policies of insurers in making underwriting and claim decisions that affect consumers.

As in the past fiscal year, the Division has found that there are significantly more homeowner insurance complaints than medical professional liability insurance related complaints. Most homeowner insurance complaints involve either consumer dissatisfaction with the handling or payment of a claim or with the action taken by an insurer to cancel insurance coverage or decline to renew coverage.

The Division reviewed 391 homeowners determination letters and 6 medical professional liability insurance determination letters issued by MIA between July 1, 2006 and June 30, 2007. (See Appendix A). The Division routinely advises consumers that it does not represent individuals in their disputes with insurers, although the Division attorneys will give guidance to consumers about the administrative hearing process.

B. Division Review of Rate Filings

Insurance companies issuing homeowners policies in Maryland are required by statute to file with the Commissioner all rates, supplementary rate information, policy forms, endorsements and modifications of any of these documents.¹⁶ Homeowners insurance is subject to the competitive rating laws. Insurers are allowed to use the filed rates without obtaining the prior approval of the Commissioner.¹⁷ All policy forms must be approved by the Commissioner before use in Maryland.

The Division reviewed all homeowners rate filings made with the MIA during the fiscal year. These filings included rate increases and decreases, new rating rules, rule changes, new policy forms, and revisions to policy forms.¹⁸ The services of two actuarial consulting firms, under contract with the Division, were used to analyze the filings that included actuarial data. In some instances,

¹⁵ PICD letters are not sent to individuals whose complaints have been resolved in their favor or who have withdrawn their complaints. Additionally, PICD does not send its letters to individuals where the MIA determination letter indicates that there may be an allegation of fraud by the complainant.

¹⁶ Md. Code Ann., Ins. Art. § 11-206.

¹⁷ Md. Code Ann., Ins. Art. § 11-307.

¹⁸ The effect of a rate, rule or form change on consumers is not easily ascertained without in-depth analysis of the filing.

the Division's consultants determined that filings did not include adequate supporting actuarial data and questions on the documentation and requests for additional supporting information were generated by the Division's consultants directly to the insurers. The Division, through its consultants, advised the MIA of all inquiries being forwarded to the insurers. With only a few exceptions, the PICD consultants received responses from the insurers' actuaries.

Still under review by the Division from FY 2007 is a group of filings from insurers who notified the MIA, pursuant to Md. Code Ann., Ins. Art. § 19-107, that new homeowners policies would not be written in designated geographic areas, particularly coastal areas. The Division's consultants reviewed all supporting data initially supplied by these insurers and supplemental information provided to the MIA in response to MIA requests and requests from the Division. In the case of two such filings made in December 2006, following the Insurance Commissioner's decision on May 31, 2007 to allow the insurer to implement its underwriting plan on June 4, 2007, the Insurance Commissioner granted the Division's June 1, 2007 request for a hearing on the filings.¹⁹

Insurance companies issuing medical professional liability insurance policies in Maryland are required by statute to obtain the approval of the Commissioner before using rates, rules, policy forms, and any modifications of such documents.²⁰ These filings may not take effect until thirty (30) working days after filing with the Commissioner.²¹ There are significantly fewer medical professional liability insurance filings received each year by MIA as compared to homeowners insurance filings. As with homeowners filings, the Division reviewed all filings made by medical professional liability insurers during the fiscal year. The Division's consultants reviewed the medical professional liability filings in the same manner as the homeowners filings, with requests for additional documentation being sent directly to insurers with copies to MIA actuaries. In at least two cases, insurers did make modifications to their filings based on the Division's inquiries.²²

The Division reviewed 451 homeowners insurance filings and 65 medical professional liability insurance filings for FY 2007. (See Appendix B). There were no rate hearings in FY 2007 regarding either homeowners or medical professional liability insurance filings.

C. Pending Legislation

The Division reviewed pending legislation filed in the 2007 legislative session to determine

¹⁹ A hearing was held in this matter, In re Allstate Insurance Company, on December 13 and December 14, 2007 before Associate Deputy Commissioner Thomas Paul Raimondi, sitting on behalf of the Commissioner. No final order had been issued at the time of this Report.

²⁰ Md. Code Ann., Ins. Art. § 11-206(a)

²¹ Md. Code Ann., Ins. Art. § 11-206(g).

²² In one dental insurance rate filing, PICD's inquiry into the profit component of the company's actuarial analysis resulted in rate changes that were favorable for the dentists.

the impact on insurance consumers. Reviewing and recommending prospective legislation is an integral part of the Division's mandate. Additionally, the Division was asked to participate in sessions in both the House Economic Matters Committee and Senate Finance Committee to brief committee members on insurance regulation in Maryland and pending issues in insurance, most notably those involving property insurance in coastal areas. The Division supported Delegate David D. Rudolph's bill creating the Task Force on the Availability and Affordability of Property Insurance in Coastal Areas. Additionally, the Division supported legislation to permit first party actions against insurers for lack of good faith in claims settlements.

IV. Cases

During FY 2007, the Division opened sixteen (17) new cases. (See Appendix C). Cases are opened by the Division when:

- (a) there is a request for assistance by a consumer who makes contact first with the Division, rather than filing a complaint with the MIA;
- (b) there is a request for assistance by an individual in response to the Division's letter sent subsequent to the MIA's determination letter and the People's Insurance Counsel believes that further investigation is required to determine if there are violations of the insurance laws of Maryland; or
- (c) the People's Insurance Counsel reviews an MIA-issued determination letter or series of letters and determines, without request by the original complainant(s), that further investigation is required to determine if there are violations of the insurance laws of Maryland.

During FY2007, one case originated in FY 2006 was resolved in favor of consumers. After a request for hearing by the complaining homeowner and the Division, Montgomery Mutual Insurance Company reversed its non-renewal due to the homeowner's incidental farming exposure and reinstated the homeowner's policy during FY 2006. After conducting further investigation, the MIA issued an order/consent agreement (MIA-2006-11-023) in November 2006 against the insurance company finding the non-renewal a violation of Maryland insurance law and ordering reinstatement of 45 policyholders. A \$5,000 penalty was imposed on the company.²³

In two FY 2007 cases, after the Division requested further review by the MIA, the insurers were ordered to refund a portion of premium to the homeowners. In one of those cases, the Division asked the MIA to conduct further investigation to determine if the insurer had engaged in a pattern of conduct in violation of the insurance laws of Maryland.²⁴

Still pending with the Division are four FY 2006 cases and two FY 2007 cases. Two of the

²³This Order was noted in Footnote 26 of the Annual Report of the People's Insurance Counsel Division, Fiscal Year 2006 although the Order was issued in FY 2007.

²⁴At the time of the issuance of this Report, the Division had not received notification that the investigation was completed nor has an order been issued by the MIA in this matter.

FY 2006 cases involve termination of homeowners coverage by the insurer based on underwriting guidelines. In each of these cases, the Division requested a hearing within the 30 day period that the complaining consumer has to request a hearing. The Division's standing to proceed to a hearing on a consumer complaint matter was challenged and a hearing on the issue of standing was held on September 20, 2006. The Final Order issued on April 27, 2007 concluded that the Division does not have standing to request or participate in a hearing where a consumer does not request a hearing or when a consumer requests a hearing but later withdraws the hearing request.²⁵ The Division requested judicial review of the April 27, 2007 Order by the Circuit Court for Baltimore City on May 25, 2007.²⁶

V. Consumer Assistance Efforts

As in FY 2006, the Division worked to increase consumer awareness of the Division. Consumers can find information on the Division at the web page at the website of the Office of the Attorney General and can communicate with the Division by an email address (PIC@oag.state.md.us) for use by consumers. The Division created two brochures: one on the Division and homeowners insurance and the other on the use of underwriting guidelines by insurers.²⁷

VI. FY 2008 Activities

The Division closes FY 2007 with several goals for FY 2008. They include:

- Resolution of issues regarding more timely access to public information at the Maryland Insurance Administration;²⁸

²⁵ The two cases, *In re Lenora Stevenson* and *In re David and Delores Finney*, were consolidated by the tribunal and all parties were afforded the opportunity to submit memoranda following the hearing.

²⁶ After the close of FY 2007, on October 24, 2007, the Circuit Court case was dismissed by request of the Division after reaching an agreement with the Maryland Insurance Administration on procedures to bring issues in complaint cases before the Administration. An October 12, 2007 letter from the Insurance Commissioner related to the pending consolidated *Stevenson* and *Finney* cases acknowledged and confirmed the Division's authority to seek a hearing before the MIA in certain circumstances.

²⁷ These brochures were first made available at the Maryland State Fair in August 2006 and were again available at the 2007 Maryland State Fair.

²⁸ Although the Annual Report for FY 06 listed the development of a Memorandum of Understanding with the Maryland Insurance Administration as a goal for FY 07, many issues to be addressed in the Memorandum of Understanding have been resolved between the People's Insurance Counsel Division and the Maryland Insurance Administration.

- Continued review of insurer practices that designate coastal areas and other geographic areas for underwriting standards and deductibles differing from those in the rest of the state;
- Development of an Insurer Working Group in order to discuss issues common to consumers and all carriers;²⁹ and
- Production of additional educational materials and participation in more community programs to educate consumers about their rights.

VII. Conclusion

The Division will continue its efforts to advocate on behalf of consumers regarding homeowner insurance and medical professional liability insurance matters before the Maryland Insurance Administration. In light of the Maryland Insurance Administration's opinion in *Finney* and *Stevenson*, the Division will increase its efforts to initiate investigations and forward requests to the Commissioner to take action based on the Division's investigations. Proposed legislation will continue to be reviewed to safeguard consumer interests. Feedback from consumers will continue to be used as a catalyst for the development of new educational materials and presentations.

²⁹The People's Insurance Counsel Division made contact with some insurance industry representatives during FY 2007 in order to initiate a Working Group but did not have any meetings.

APPENDIX A

PEOPLE'S INSURANCE COUNSEL DIVISION REVIEW OF DETERMINATION LETTERS ISSUED BY MARYLAND INSURANCE ADMINISTRATION*

DETERMINATION LETTER INFORMATION	
NUMBER OF DETERMINATION LETTERS REVIEWED BY PICD	391 Homeowners 6 Medical Malpractice
NUMBER OF TIMES MIA DETERMINED NO INSURANCE CODE VIOLATION **	298
NUMBER OF CONSUMERS WHO CONTACTED PICD AFTER RECEIVING PICD'S LETTER	68

** In eighty-three cases the insurance company changed its position vis-a-vis the complaint or the complainant withdrew his/her complaint. Eight cases were considered moot because the consumer purchased other insurance. Two cases are in litigation and the MIA found in six cases that the insurance companies had violated the insurance laws of Maryland.

INSURANCE COMPANIES WITH THE MOST COMPLAINTS IN DETERMINATION LETTERS REVIEWED BY PICD	
NAME OF COMPANY	NUMBER OF COMPLAINTS
Allstate Insurance Company	54
Nationwide Mutual Fire Ins Co	29
Standard Fire Insurance Company	53
St. Paul Travelers	19
Erie Insurance Exchange	24
State Farm Fire & Casualty and State Farm Mutual Automobile	31
Liberty Mutual Insurance Company	14
Brethren Mutual Insurance Company	10

APPENDIX B

PEOPLE'S INSURANCE COUNSEL DIVISION'S REVIEW OF INSURER FILINGS

HOMEOWNER INSURANCE FILINGS			
FORMS	RATES/RULES	OTHER	TOTAL
213	236	2	451
MEDICAL PROFESSIONAL LIABILITY INSURANCE FILINGS			
FORMS	RATES/RULES	OTHER	TOTAL
19	42	4	65

FORMS filings contain examples of insurance policy forms, including endorsements and required policyholder notifications, that insurance companies wish to introduce or use as replacements for previously approved forms.

RATES/RULES filings contain the insurer's proposed costs of insurance to the policyholder and the actuarial data to support those costs and also contain factors and underwriting guidelines that explain the rates for different types of risks.

APPENDIX C

PEOPLE'S INSURANCE COUNSEL DIVISION CASES – FY 2007

FY 2007 CASE STATUS	
CASE STATUS	NUMBER OF CASES
OPENED	17
CLOSED FY 2007	15

Note: Three cases from FY 2006 remained open at the end of FY 2007. They included *Finney* and *Stevenson*. Additionally, a consumer complaint was forwarded to the MIA in June 2006, and as of the time of this Annual Report, the MIA has not issued a determination letter.

CASE TYPES	
CASE TYPES	NUMBER OF CASES
CONSUMER REQUESTED ASSISTANCE FROM PICD (PRIOR TO ANY COMPLAINT TO MIA)	5
CONSUMER REQUESTED ASSISTANCE SUBSEQUENT TO MIA DETERMINATION IN FAVOR OF INSURER	11
PICD INVESTIGATIONS BASED ON MIA DETERMINATION LETTERS ³⁰³⁰	1

³⁰In its Annual Report for FY 2007, the PICD labeled this category 'PICD ALLEGES INSURANCE CODE VIOLATION SUBSEQUENT TO MIA DETERMINATION IN FAVOR OF INSURER.' In light of the procedural resolution of *Finney* and *Stevenson*, the Division has modified its classifications of cases.